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GENERAL COUNSEL'S OPINION NUMBER 56-3, DATED 18 MAY 1956

Financial losses and personal expenses incurred by employees are reimbursable only when arising out of the unusual functions of this Agency.

A summary review of the Director's authority to expend unvouchered funds.

TO THE DEPUTY DIRECTOR (SUPPORT)

1. A memorandum from Chief, FI/OPS to DD/S dated 15 March 1956, recommends partial reimbursement to Mr. A. for financial losses and personal expenses incurred because of a change in orders. That memorandum also recommends that an examination be made of problems typified by Mr. A's situation. We have taken the opportunity to review a number of rulings made by this Office on the use of [REDACTED] While many of these rulings are already, and more will become increasingly, available in the published opinions of this Office, a summary of this review may be helpful.

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2. The language in [REDACTED] follows the authority initially granted by the DCI under Section 10.12 of the Confidential Funds Regulations, which provided that:

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"When authority is not otherwise specifically provided in these regulations, the Deputy Director (Administration) may take final action on any matter involving the expenditure of confidential funds, if the expenditure involved in each matter does not exceed \$2500."

However, it was slightly revised to qualify the matter as that "arising out of the unusual functions of this Agency," and describes the term "unusual functions" as "intended to differentiate the extraordinary problems of this Agency from the normal administrative or operating problems confronting the ordinary Government agency." This addition was made in the interest of emphasis following the oft-quoted opinion of the Comptroller General (31 Comp. Gen. 191), dated 21 November 1951, pertaining to retroactive pay. He states there:

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IN CLASS/DECLASS/CLASS CHANGED TO: IS SECRET JUST. 22
NEXT REV DATE 89 REV DATE 21079 REVIEWED BY [REDACTED] PREP DOC. 38
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"The extraordinary powers granted the Central Intelligence Agency by section 10 and other sections of the 1949 Act - and this I am sure you will agree - result solely from the congressional recognition of the extraordinary functions assigned that Agency by the act.

"This Office recognized that fact when the bill which became the Central Intelligence Act of 1949 was pending before the Congress and for that reason did not object to the grant of what must be conceded as unusual authority. But I feel certain it was not contemplated by the sponsors of the bill or by the Congress that this broad authority would be resorted to, or that it even contemplated a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency."

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4. The problem then becomes an analysis of facts in each situation with regard to what the "unusual functions" of this Agency are. In general terms, these relate to cover and security where conditions make these the dominant consideration and bear more than a simply marginal relationship to what would otherwise be a problem facing any Government employee. Since the authorization here is necessarily broad within the dollar limitation, an endless variety of fact can be encountered. Some of the cases themselves are illustrative. Where an individual undertook travel prior to entrance on duty in the belief that it had been properly authorized, payment was not allowed under Section 10.12 of the Confidential Funds Regulations, when it was found that even though there appeared to be some color of authorization, nevertheless the requirements of approval otherwise stipulated in the Confidential Funds Regulations had not been met. Another case of denial occurred where advance rental was forfeited because of destruction of

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the overseas premises by fire. Here we pointed out that this was a purely personal hardship which held no considerations peculiar to the Agency. In another instance, payment of storage charges which occurred during a period of time prior to the final assignment of the individual were disallowed in the absence of a clear demonstration that they were undertaken because of some operational necessity. Nor have we permitted payment for the purchase of tropical clothing on the basis that here again was a purely personal obligation which could normally be anticipated. We have consistently denied the propriety of reimbursement for loss of rent resulting from the cancellation of orders or, on the other hand, the forfeiture of rent because of insufficient time to give agreed notice. The same would be true where the loss resulted from the sale or repurchase of a house when orders were unexpectedly revoked. In cases of travel between a foreign area and the United States for "compassionate leave" prior to the completion of the overseas tour of duty, the claim has been disallowed. The same result has been reached when the problem has been emergency medical treatment for dependents. On the other hand, payments have been authorized where it appeared that the individual was, because of security, denied access to a normal means of asserting his claim and there was more than nominal merit in his assertion. Where there is a clear operational need for the expenses, then something that would otherwise be personal can be justified. However, this is an area that should be treated very carefully and there should be the essential requirement that what would normally be considered personal is not so in fact because of the manner in which the individual must act in the Agency interest. Whatever our sympathies may be, personal hardship alone is not a criterion.

5. In the present case of Mr. A. it is requested that recompense be made:

- a. In a minimum amount of \$600.00 to cover three months salary lost by his wife; and
- b. "For such items of household furniture and equipment (such as footlockers) as can be accepted from him by the Agency for general Agency use, if feasible."

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6. At the outset, we should like to say that we are sympathetic not only to the personal position of Mr. A., but also to the broader problem involved in the possible economic hazards met by all personnel who, through no fault of their own, find themselves faced with unusual expenses which they would not have otherwise incurred had it not been for an overseas assignment and which have now become superfluous in view of the deterioration of that assignment. Since the cancellation of orders can be safely assumed to be neither capricious nor whimsical, but a carefully considered action in the best interests of the Government, it appears to be a problem that must be encountered as a condition of employment by all Government personnel. An attempt has been made here to distinguish the selection of Agency personnel from other Government employees as a justification of the "unusual function" of this Agency



7. With regard to Mrs. A's loss of salary, we believe that this was a normal risk which could be anticipated in the case of any wife preparing to accompany her Government-employee husband overseas. This is therefore personal in nature and reimbursement would not, in our opinion, be a proper exercise of authority under [redacted] In the matter of the Agency's purchase from Mr. A. of items of household equipment for general Agency use, the established Government policy has long been clear. As the Comptroller General said in his opinion in 27 Comp. Gen. 735:

"Contracts between the Government and its employees are not prohibited by statute except where an employee of

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the Government acts as agent both for the Government and the contractor in the particular transaction or where the service to be rendered under the contract is such as could have been required of the contractor in his capacity as an employee. 18 U.S.C. 93; 5 id. 69,70; 21 Comp. Gen. 705. However, as pointed out in 14 Comp. Gen. 403, referred to by you, this Office has held that contracts between the Government and its employees are open to criticism on the grounds of possible favoritism or preferential treatment and should not be entered into except for the most cogent reasons. Also, see 5 Comp. Gen. 93; 21 id. 705; 25 id. 690."

A most "cogent reason" would generally exist where the article purchased was so unique in nature that only the employee could supply it, or in the case of this Agency's function where the purchase was dictated by a compelling security precaution which could not be found otherwise. We do not believe that either consideration applies here.



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